

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
February 14, 2023 Session

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**STATE OF TENNESSEE v. CHARLES RUTLEDGE**

**Appeal from the Criminal Court for Davidson County  
No. 2017-C-2191 Mark J. Fishburn, Judge**

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**No. M2022-00226-CCA-R3-CD**

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Following a bench trial, the Appellant, Charles Rutledge, was convicted of second-degree murder, for which he received a sentence of twenty-eight years' imprisonment. In this appeal, the Appellant presents two issues for review: 1) whether the evidence was sufficient to sustain his conviction, and 2) whether the State failed to disclose witness information in violation of Brady v. Maryland, 373 U.S. 83 (1963). Upon our review, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which J. ROSS DYER and TOM GREENHOLTZ, JJ., joined.

Kyle D. Parks, Nashville, Tennessee, for the Defendant-Appellant, Charles Rutledge.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Glenn Funk, District Attorney General; and Janice Norman, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

The victim, OShay Rutledge, was fatally shot by his cousin, the Appellant, after an argument on the night of October 25, 2016. The Appellant was subsequently indicted by a Davidson County Grand Jury for first degree murder. The following proof was adduced at the Appellant's three-day bench trial, which occurred on June 7 through 9, 2021.

Eric Burford, a patrol officer with the Metropolitan Nashville Police Department (MNPd), testified that on October 25, 2016, he was patrolling the area of 1805 Church Street and was "dispatched to a call for service for shots fired." He immediately drove down 18th Avenue, observed a crowd forming in front of 1805 Church Street, and turned left onto Church Street. He stopped in front of 1805 Church and proceeded towards the

crowd and observed an individual, later identified as the victim, lying on the ground. He said a female was with him attempting to render aid, and he joined her in doing the same. He could not remember the name of the business at that location, but he believed it was a hookah bar.

Officer Burford said, “there was a lot of blood directly behind [the victim’s] head[.]” He used gauze from the medical kit inside his vest to try and stop the bleeding. The female attempting to render aid said the victim did not have a pulse, and as she was pushing, Officer Burford felt behind the victim’s head area trying to stop the blood from the exit or entrance wound. The medics soon arrived and took over lifesaving efforts. Officer Burford then began locating any witnesses to the offense, coordinating with the other officers on the scene, and securing any evidence left at the scene. Based on a radio dispatch that a car nearby the scene had wrecked, Officer Burford also sent other officers to block off the entire area.

On cross-examination, Officer Burford agreed he was one of the first officers on the scene and rendered aid to the victim. He agreed he spoke with several witnesses and took notes of what the witnesses told him. While Officer Burford was aware that Officer John Riddle was a Midtown detective, Officer Burford did not recall speaking to Officer John Riddle that night. Asked if his report indicated “that you got testimony of witness statements that said two suspects fled in opposite directions,” Officer Burford replied as follows:

I believe there was a maybe a security guard that was on the scene that was trying to give us direction of flights of people running. I do remember there was the crowd itself trying to disperse quickly and that is one of the reasons why we tried to get officers to locate witness[es] as soon as possible.

Asked if he relayed that information to Officer Riddle, Officer Burford said, “I don’t remember that specifically[.]” Officer Burford canvassed the area closer to the end of the night. On redirect examination, Officer Burford affirmed that he did not have a “specific recollection of telling Officer Riddle anything specific[.]” He further agreed that he did not receive any specific suspect “direction—description.” On recross examination, trial counsel said he understood that Officer Burford could not remember “exactly what you said five years ago[,]” but asked if Officer Burford remembered speaking to officers that night, and Officer Burford replied yes. Officer Burford further agreed that it was common practice to “relay truthfully what would have been shared to [him] that night from witnesses that [he] had spoken with[.]” On final redirect examination, Officer Burford agreed that any information he obtained on the night of the offense came from a security guard.

In October of 2016, Jerry Vanderpool was working as a security guard at the Indian Queen, a Hookah bar in Nashville. At trial, he identified two photographs of the Indian Queen, exhibits 1 A-B, and a map, exhibit 2, showing the location of the Indian Queen on Church Street. The night of the offense began as “an ordinary event . . . [with] people outside smoking hookah, people inside smoking hookah, having drinks, listening to music.” Vanderpool detailed where he was positioned at the front of the bar, based on exhibit 1B. Around 9:00 p.m., while Vanderpool was checking identification at the front door, he heard “what sounded like a shotgun blast, but it could have been mistaken for the backfire of a car . . . [which] is what everybody almost took it for [because] nobody moved[.]” Within seconds later, Vanderpool heard “rapid gunfire,” and everyone on the front patio ran inside. Moments after that, as Vanderpool looked to see where the gunfire was coming from, he saw “an individual running across the street from right here [witness indicating on map].” Vanderpool said the individual was “pointing this way shooting and then just continuously shooting, cut across here into the parking lot, falls, g[e]ts up [and] continues shooting and runs around to the back alley.” Vanderpool illustrated the path taken by the individual on the map and agreed that “it start[ed] on the Indian Queen side of Church Street, kind of right there at 18th Avenue” and not on the Chappy’s building side of the street. The individual continued across Church Street towards the Nashville Business Journal building at 1800 Church, across that building and into the alley behind it. He agreed that there were pauses between the rapid gunfire, that it was “multiple gunshots,” and that it was more than twelve gunshots fired. Vanderpool was not able to identify the shooter because it was dark, but he described him as “black, African American,” “six-foot, low cut, was wearing a dark jacket . . . with maybe a hood on it[.]”

Vanderpool observed the individual shooting in the direction as he described, but Vanderpool did not observe any return gunfire. He specifically looked for someone the shooter was shooting at and did not initially see anyone. “A short time later,” Vanderpool saw the victim “come across the bushes from right here in the parking lot [indicating on screen].” Vanderpool described the victim as “creeping up crossing the street heading towards Indian Queen.” Vanderpool drew his weapon and asked to see the victim’s hands. In response, the victim told Vanderpool he had been shot. Vanderpool told the victim to lie down, and a nearby female began to render aid. Vanderpool then flagged down the police and notified them of the situation. Vanderpool could not tell where the victim had been shot, but the victim was gripping his upper body. As the victim came closer, Vanderpool observed blood on his neck.

On cross-examination, Vanderpool said his view from where he was positioned at the front door of the Indian Queen was unobstructed and “pretty wide-open[.]” He was able to see the Chappy’s building and the post office well. He agreed that “roughly [thirty] seconds” passed between the initial sound of gunfire and the rapid gunfire. He did not hear anything other than the people and music on the patio during the thirty seconds. Vanderpool

agreed that the shooter appeared as if “he was running away from something . . . it just looked like he was getting out of there and shooting.” The victim appeared almost “immediate[ly]” after Vanderpool saw the shooter running past the Business Journal building. Vanderpool agreed there were no cars or traffic obstructing his view at the time. Vanderpool thought the first gunfire blasts came from “the back end of what was then Chappy’s.” He agreed that the individual he saw “running across Church Street in front of 1800 Church Street” was shooting back towards Chappy’s.

On redirect examination, Vanderpool clarified that he did not see anyone shooting during the first round of what he believed to have been a shotgun blast or the shots that occurred immediately after. Vanderpool said he observed the person shooting and running across the street during the second round of gunfire. Although Vanderpool did not observe the type of firearms used on the night of the offense, he agreed that the initial sounds he heard were different than the second set of gunfire he heard.

Officer Jason Spencer was a sergeant with MNPD on the second shift at the Midtown precinct at the time of the offense. He was dispatched to the instant shooting call, and upon arrival, was advised that a male black suspect was fleeing from the area down Church Street wearing a black t-shirt and blue jeans. He drove to the area to see if he could locate the suspect, but he was unsuccessful. He responded to the hospital to check the status of the victim. While en route to the hospital, he viewed a photograph of the victim, and upon arrival to the hospital, he confirmed the victim had died. While at the hospital, he encountered “Ms. Warfield”<sup>1</sup> in the waiting room and had another officer stay with her until detectives arrived. Ms. Warfield intimated to him that she possibly knew who shot the victim. Once detectives arrived at the hospital, Officer Spencer advised him of the information he had been given and provided them with the victim’s personal items which included a property bag containing the victim’s clothes. On cross-examination, Officer Spencer estimated the time between when he was dispatched to the scene to his arrival at the scene was five to ten minutes. He estimated he was at the crime scene area for ten minutes before he was directed to the hospital. Once he left the hospital, he did not return to the crime scene area.<sup>2</sup>

Amanda Westhelle was having dinner at the Indian Queen on the night of the offense. She was sitting outside on the patio and suddenly heard what she thought were three or four fireworks. Fifteen seconds later, she heard another set of what she thought was fireworks. When she realized the fireworks were gunshots, she, along with the other twenty-five to thirty patrons in the restaurant, dropped down to the ground and flipped up

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<sup>1</sup> No other identifying information was given for this individual.

<sup>2</sup> Due to an unknown conflict, the parties agreed to take the testimony of Officer Spencer on May 24, 2021.

the tables to protect themselves. After the commotion was over, Westhelle observed a man injured on the ground. She ran over, began to apply pressure to his neck injury, and then commenced cardiopulmonary resuscitation (CPR) because he did not have a pulse. In doing so, Westhelle “actually flipped him” on his side and did not see any firearms around the individual. Westhelle said the ambulance eventually arrived and took the man away on a stretcher.

On cross-examination, Westhelle said she did not observe a difference between the sound of the first and second set of shots other than the second set may have been closer to her. Although Westhelle was unable to identify the location of the Indian Queen from the map, she recognized the front of the Indian Queen from the photographs. She acknowledged that there were no cars or traffic in the parking lot obstructing her view. She said that she did not hear any “car movement” or “tire screeching” during the second set of shots.

On the night of the offense, Christopher McGuirt was outside on the smoking patio of the Canvas Lounge on Church Street in Nashville, Tennessee. He testified that he was “just hanging out” when he heard what initially sounded like fireworks. He looked down the street and observed a white four-door sedan going through the intersection with an individual chasing it. McGuirt said he realized the fireworks sound “was gunfire pointing at the direction of the” white four-door sedan as it was heading towards the post office. He illustrated where he observed the white four-door sedan and the gunfire on the map exhibit. From McGuirt’s perspective, the shooter was shooting towards the driver’s side of the white four-door sedan. He described the shooter as wearing jeans and a dark hoodie or black t-shirt. Although McGuirt did not know the exact number of shots he heard, he estimated he initially heard three or four shots, like “pow, pow, pow,” and then a second set of three or four more shots after that. Upon hearing the shots, everyone around McGuirt either hit the floor or ran inside the lounge. When McGuirt realized it was gunfire, he called 911. Detectives contacted McGuirt a couple of weeks later, and McGuirt advised them of what he had seen and heard that night, which was the same information he had relayed at trial. On cross-examination, McGuirt confirmed that he did not initially see the first three or four shots he heard. He agreed there was “a brief moment” between the first and second set of gunfire. McGuirt agreed that when the car passed the post office the shooter “went back the direction that they were coming from.” He testified, consistently with his prior statement, that the shooter was running toward West End. After multiple rounds of direct and cross-examination centering on the direction the shooter ran, McGuirt agreed that “when [the shooter was] done shooting at the car . . . [he] turned and went back [in the opposite] direction as the car floated down the street that way towards the post-office.”

Officer Warren Fleak, a crime scene investigator with the MNPD, testified that he responded to the crime scene in the instant case. Upon arrival, he was advised that the victim had been transported to the hospital where he was pronounced deceased. Officer Fleak, along with Danielle Connor, processed the crime scene and created a crime scene diagram, admitted as exhibit 3, which reflected the location of the evidence collected from the crime scene by evidence markers at the crime scene. The diagram listed the items that were recovered from the scene, and the numbers corresponded to the numbers listed on the photographs and the evidence bags containing the items. The diagram showed fifteen .40 caliber cartridge casings, two projectiles, and two projectile fragments. It further showed the victim's red shirt located "in the corner between the ramp and the actual building itself[,]” and a projectile fragment, listed as number 19 on the diagram, that was recovered from outside the Old Chappy's restaurant. The State also highlighted an area identified as "PS1" on the diagram and another projectile fragment, listed as number 18. Officer Fleak said projectile fragment 18 "actually struck the window of the post office." Officer Fleak testified that the car at the bottom of the diagram reflected a car that "ran up onto the curb [on the night of the offense] and that large thick black line is the actual fenced in area around a parking lot that the [car] struck." On cross-examination, Officer Fleak said that placing the cards by the items found and recovered from the scene as well as doing the diagram was a group effort performed by multiple officers on the scene.

Officer Danielle Connor, a crime scene investigator with the MNPD, testified that she responded to the crime scene on the night of the offense. She assisted Officer Fleak by taking 74 crime scene photographs, which were admitted into evidence in digital format as exhibit 17A-VVV. The photographs corresponded to the crime scene diagram previously admitted as exhibit 3. She also collected the shell casings and bullet fragments that were shown by evidence markers in the crime scene diagram as well as in the photographs as 1 through 19, which were admitted as exhibit 18, four fired shell casings recovered at evidence markers 1, 2, 3, 5 near a lighted pole, exhibit 19, eleven cartridge casing recovered from evidence markers 4-16 creating a diagonal line from a pole crossing Church Street to 1800 Church, exhibit 20, two projectiles recovered from evidence markers 6 in the middle of Church Street and evidence marker 18 near the post office, and exhibit 25, two copper jacket bullet fragments that were recovered from evidence marker 17 at the corner of Church Street and 18th near the post office, and evidence marker 19, recovered from in front of the 1721 Church Str. Building.<sup>3</sup> Officer Connor agreed that she, along with the other crime scene officers, searched the entire area surrounding the crime scene and did not locate a firearm. Although the exterior of the victim's car was also searched, she did

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<sup>3</sup> During Officer Connor's testimony, the bullet fragments were not entered into evidence because they were apparently not sent over from the property room. Later in the day, the two bullet fragments were discovered, and the Appellant stipulated to their admissibility as exhibit 25.

not locate any firearms. On cross-examination, she agreed that all the shell casings were the same caliber.

Detective Brittany Shoemith, the lead MNPd detective in connection to this case, testified that she had since retired from law enforcement at the time of trial. Once assigned to this investigation, she responded to the Midtown Hills precinct and was advised there were individuals with information related to the shooting incident at the Midtown precinct to be interviewed. The first interviews she conducted were with Crystal Conyers and Sheila Rutledge, who identified themselves as the victim's adoptive mother and biological mother, respectively. Detective Shoemith also reviewed surveillance footage from the cameras on the buildings near the intersection of where the shooting occurred. During the first few days, the investigation involved reviewing video surveillance footage, contacting the people who called 911, attending the autopsy, and speaking to anyone who may have had information about the case. On October 28, 2016, she conducted a recorded interview with Christopher McGuirt, who was one of the individuals who had called 911. She also interviewed Andrew Mathes on November 1, 2016, during which Mathes was shown a photo lineup and identified the Appellant as the person he saw running immediately after the gunfire on the night of the offense. The photo lineup was admitted into evidence as exhibit 7.

Photographs of the Nashville Business Journal showing the cameras that recorded footage in and around the building were admitted as collective exhibit 8A-H. Exhibit 8F showed the image of the victim's car from the night of the offense. The State also showed the corresponding video surveillance footage, admitted as exhibit 9, from the cameras shown in exhibit 8A-H to the court.<sup>4</sup> The parties stipulated that the timestamp on the surveillance video was "off" by nineteen minutes, meaning it was nineteen minutes slow. Based on the narration by Detective Shoemith, the video showed a car in motion at the intersection of Church Street and 18th Avenue, with an individual walking towards the car in motion. Shortly thereafter, the video shows the individual running towards the area of the Indian Queen. At around 9:35 p.m., an individual is seen running alongside "this" portion of the parking lot towards the back part of the building. The video shows a car "with the driver's side door open and someone running from there now through the bushes into the portion of the parking lot and the [car] continues until" it comes to a stop further down on 18th Avenue. A video from Covenant Pathology, admitted as exhibit 10, showing the perspective of the back alley behind the Indian Queen was also recovered on October 25, 2016. Exhibit ten showed what appeared to be the victim's white sedan before the

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<sup>4</sup> This section of the transcript reflects that the State played the surveillance video, exhibit 9, for the court and at certain times, the video skipped, was stopped, or backed-up. Exhibit 9 is a thumb drive containing three different angles of the building. Although Detective Shoemaker was narrating the video, it is unclear from the record which parts of her testimony correspond with what was being shown on screen to the trial court.

shooting occurred. The white sedan is seen traveling in the opposite direction being followed by a male black dressed in all black or dark clothing who appears to be holding a handgun in his right hand walking alongside the driver's side of the car which is now stopped. The video also shows officers later searching the scene. The area in front of 1800 Church Street across from the post office where the person was described as getting out of the white sedan was searched, and no weapons were found. Detective Shoesmith also interviewed Ladonna Lewis on November 16, 2016. She made several efforts to locate and to speak with David Johnson and Shaquita Warfield but was unsuccessful. Detective Shoesmith interviewed Shavona Williams on December 27, 2016. Based on her investigation, she obtained an arrest warrant for the Appellant.

On cross-examination, Detective Shoesmith was asked to explain why the paperwork concerning the photo lineup was not included in her initial recorded statement of Andrew Mathes. Detective Shoesmith said that when she concluded her interview and stopped the recording, she escorted Mathes to the exit door. As she walked Mathes out to leave, he began to provide additional details about the description of the shooter. Detective Shoesmith gave Mathes an advice of rights form to ensure he understood the process, which Mathes signed. She then provided him with the photo lineup, containing six photos of individuals including the Appellant. She further explained that had Mathes gone into the same detail during the recorded portion of the interview that he did while he was being escorted out of the precinct, she would have shown him the photo lineup initially. Detective Shoesmith agreed that she filled out the photo identification form, and quoted Mathes in the comment section as saying, "number two stands out, the face, I think, I would say number two." Detective Shoesmith agreed that she requested GPS records on Steven Robinson because she "thought we had received a latent print hit" on the victim's car. She said she was likely following up on when Robinson may have come in contact with the victim's car. She agreed, however, that she never received the GPS records and that she obtained a warrant to arrest the Appellant on the same day as her GPS request. She denied the investigation "singularly focused" on the Appellant and said his name came up early in the investigation but not to the exclusion of others. She recalled interviewing Will Creeper; however, due to technical issues, the interview was not properly recorded. None of her interactions with Creeper, including the display of a photo lineup, was recorded. She explained that she conducted a second interview with Creeper. Detective Shoesmith was shown a copy of the photo lineup shown to Kriedberg, admitted as exhibit 13, in which she quoted Kriedberg as saying "number 2 stood out to him as did number 6." However, Kriedberg did not make a positive identification.

Andrew Mathes was living in an apartment building at 1818 Church Street in Nashville at the time of the offense. A photograph of his apartment building taken from the Nashville Business Journal side of the street was admitted as exhibit 32. Mathes identified his apartment from the photograph and on the map previously admitted as exhibit

2. On the night of the offense, Mathes was on the phone in his apartment, when he heard “double digit gunshots” that immediately brought him to his balcony. At that time, he saw someone, whom he later identified as the Appellant, running by the apartment. Mathes said the Appellant ran right into a lighted area, so Mathes was able to get a “good look” at him even though it was dark outside. Mathes said the Appellant was wearing dark clothes, jeans, and a hoodie. After seeing the Appellant and hearing the gunfire, Mathes called 911. At trial, Mathes identified the person he saw running immediately after hearing gunfire as the Appellant. Mathes agreed that he had previously identified the Appellant in a photo lineup, exhibit 7, and at a preliminary hearing. On cross-examination, Mathes said that he did not go to the interview with Detective Shoemith “thinking he would be giving an identification.” He did not believe the detectives mentioned the identification during his first interview, and he recalled “they kind of caught me as I was leaving.” Upon being shown the third page of the photo lineup paperwork, Mathes reconfirmed from “instant recognition” and “some process of elimination” that the Appellant was the individual he saw on the night of the offense.

Sheila Rutledge Johnson, the biological mother of the victim, testified that the Appellant is her nephew and her sister’s son. The victim was living in Nashville on the night of the offense. The morning after the victim’s death, Johnson had a conversation with the Appellant on the phone which Johnson described as follows:

I asked [the Appellant] what had happened, um, just basically what happened, make me understand what happened and [the Appellant] was like they were at a club and, um, they got into it with some guys and there was shooting and then after he was saying, I told him, well, just tell the detectives everything that you just told me, you know, because they want to talk to you or whatever and he was like he couldn’t do that, because, um, they would try to put the blame on him.

...

[The Appellant] said that they would try to put the blame on him and that, um, he was saying that they were arguing in the car or whatever and he jumped out of the car and he was shooting, shooting at the car or whatever, they were – they had gotten into an argument. They were arguing over something[,] but he didn’t say what they were arguing over, they were just arguing, and he got out of the car and was shooting.

Johnson agreed that the Appellant appeared to give one version of what happened involving getting into it with some guys at a club and then changed to another version and admitted that he and the victim were arguing inside the car and the Appellant got out and

started shooting at the car. On cross-examination, Johnson agreed that she observed the relationship between the victim and the Appellant “over the years,” and she believed they loved one another. She also agreed that no one was around her to overhear the above-stated conversation she had with the Appellant.

Dr. Emily Dennison, the Davidson County Medical Examiner, performed the autopsy on the victim. The autopsy report, admitted as exhibit 14, showed the main finding in the victim’s death was “a penetrating gunshot wound of his neck.” She was shown a photograph of the posterior back portion of the victim’s neck and torso taken at the time of the autopsy, admitted as exhibit 15, and described the gunshot wound as the major contributing cause of the victim’s death. The path of the bullet wound entered “in the back left side of the neck and went through some of the soft tissues in that area. Once it came around to the anterior front side of the neck it . . . [entered] some of the major vessels of the neck including the left carotid artery.” The bullet then “came to the midline, the soft tissues or muscles of midline of the neck[,] and we recovered the projectile from that area.” Dr. Dennison identified the projectile, admitted as exhibit 16, at trial. Although there are two vessels that feed blood to the brain, the right and left carotid arteries, the victim’s left artery was completely severed. Because it is a major blood vessel, there was a lot of blood that was leaking out into the soft tissue of the victim’s neck. In addition to extensive blood loss, there was a decrease of blood supply to his brain. The victim’s injury was “not necessarily” the type of injury one would expect to survive. On cross-examination, Dr. Dennison stated there was no soot or stippling associated with the entrance wound.

Officer Julia Johnson, a former crime scene analyst with the MNPd, testified that she analyzed the victim’s clothing from the night of the offense. She received two large bags of the victim’s clothing from the hospital, admitted as exhibits 21 A-B, placed the clothing in the MNPd drying cabinet because it contained wet blood, and then took photographs of the clothing, admitted as exhibit 22A-J. On cross-examination, Officer Johnson agreed based on her photo log, admitted into evidence as exhibit 23, that she took more photographs than were admitted into evidence by the State in exhibit 22A-J, one of which included a black jacket or hoodie worn by the victim. Officer Johnson also confirmed that she found a small bullet fragment in the victim’s clothes after she removed them from the drying cabinet. On redirect examination, the bullet fragment collected from the victim’s clothing was admitted as exhibit 24. On recross examination, Officer Johnson was asked if exhibit 24 had been further analyzed, and she said that there were no additional names on the evidence envelope after hers to so indicate.

Ladonna Lewis testified that she went to high school with the Appellant. On the night of the offense, she was in a car with some friends, “David,” “KiKi,” and “China,” on their way to celebrate “KiKi’s” birthday at the Indian Queen hookah bar when two phone calls came in through the Bluetooth speakers of the car. Before Lewis was asked another

question during trial, she said quietly, "I don't want to do this." She then said the car she was driving belonged to David Johnson, and the phone that connected to the incoming Bluetooth calls belonged to David Johnson. In the first phone call, Lewis said an unfamiliar male voice told them not to come to the hookah bar because "somebody got to shooting." In the second phone call, Lewis recognized the voice of the caller as belonging to the Appellant. She testified the Appellant told them that "he had shot, shot at [the victim] bitch ass for putting him out the car[.]" She did not see the Appellant on the night of the offense. She identified the Appellant in court, and she agreed that she did not want to testify in the trial. On cross-examination, Lewis agreed that the Appellant called a second time on the night of the offense. In the second call, the Appellant did not say that he "shot the victim" but instead said that he shot "at" the victim.

Shavona Williams testified that she lived in Nashville at the time of the offense and that the victim was like a brother to her. She knew the Appellant, but she was not as close to him as she was with the victim. On the night of the offense, she was in the car with her brother, David Johnson, and some other friends named "Donna" and "Kee Kee." They were on their way to celebrate a birthday at a hookah bar on Church Street. While en route to the hookah bar, she saw the victim's car wrecked into a pole. She said they stopped the car, everyone got out except her, and she did not see the victim inside the car. She noticed the car was "shot up." When they drove up the street, the Appellant called over the Bluetooth speaker phone and said that he shot at the victim's car. When they reached the "top" of the street, they jumped out of the car, ran to the hookah bar, and saw the victim laying on the ground. After she tried to help the victim, the ambulance took him to the hospital, and they followed. She said the call from the Appellant occurred before they were on their way to the hospital. She did not learn the victim had died until she arrived at the hospital. She identified the Appellant at trial. She agreed she had been convicted of misdemeanor theft, described as shoplifting, years ago when she was a teenager.

On cross-examination, she affirmed she did not know the Appellant that well, and she recognized his voice on the phone because her brother said that was who was on the phone. She said she also knew it was the Appellant because it was his voice on the phone, and she recognized it. Asked if she remembered telling officers the person on the phone sounded intoxicated, she replied, "Him." She explained further that she could tell when someone is "lit" or "high." She did not witness a second phone call by the Appellant. Asked if anyone opened the victim's car door upon approaching the wreck scene, Williams said no. They only looked inside the car, and she did not get out of her brother's car at that time. On redirect examination, Williams said she knew the Appellant was with the victim on the night of the offense because they all gathered before going to the hookah bar. Although she did not see the Appellant and the victim together, she knew they were together because "everyone knew who was riding with who."

Officer Charles Linville, a crime scene analyst with the MNPd, testified that he took a set of photographs of a white 2013 Chevy Malibu, admitted as exhibit 26A-VV, that was recovered from the instant crime scene. One of the photos showed the window behind the driver's seat was "busted" or "had an apparent bullet defect." Officer Linville opined that officers placed tape on the window to ensure safe transport back to the station lab. There were multiple photographs indicating that bullets struck the car from the rear towards the front at an angle. There were also photographs showing a Mountain Dew bottle in the back seat armrest cupholder area and a firearm in the driver's floorboard. When Officer Linville processed the car, he recovered one fragment from the carpet, as described in exhibit 26K, which was admitted as exhibit 27. Exhibit 26EE was a photograph of the firearm, which was described as an American Tactical forty-five caliber, with no magazine inside. There was no ammunition, or a clip found inside the car. The Mountain Dew bottle that was collected from the car, admitted as exhibit 28, was swabbed in the mouth portion for DNA and processed for fingerprints. The Minute Maid bottle on the front passenger interior floor, admitted as exhibit 29, and as shown in exhibit 26RR, was swabbed for DNA in the mouth area and processed for fingerprints.

On cross-examination, Officer Linville agreed that based on the trajectory of the bullets the shooter would have been standing to the rear-left of the driver's side of the car. On review of exhibit 27, Officer Linville said it appeared Officer Bridget Chambers sent the fragment for further analysis. Officer Linville counted four separate projectile defects on the car including the rear driver's side window, the one in the crease between the driver's door and the rear driver's side door, the one at the rear of that door, and the front fender.

Bridget Chambers, a forensic scientist in the firearm and toolmark identification division of the MNPd, testified as an expert in firearms and ballistics analysis. She analyzed the firearm recovered from the victim's car, the bullets and bullet fragments in relation to this case, and cartridge cases collected at the crime scene. She produced a report which was admitted as exhibit 30. Based on her analysis, exhibit 18, four Perfecta Smith and Wesson .40 caliber shell casings, and exhibit 19, eleven Winchester .40 Smith and Wesson shell casings, were fired from the same unidentified firearm. She said it is common to analyze cartridge casings that are different brands, and even a firearm with a magazine with live ammunition in it may have different brands or types of ammunition. Due to the different caliber of ammunition, she did not compare the .40 caliber cartridge cases collected in exhibits 18 and 19 to the .45 caliber firearm recovered from the victim's car. Regarding the bullets recovered in exhibit 20, located at evidence marker 6 in the middle of Church Street, and exhibit 16, recovered from the victim's neck, Chambers determined they were .40 caliber bullets. Chambers was unable to determine the caliber of the bullet fragments recovered in this case. Based on her report, she concluded that exhibit 20, the two projectiles consisting of a bullet and a bullet fragment recovered from the scene at

evidence markers 6 and 18, and exhibit 25, the two copper jacket bullet fragments that were discovered from the scene at evidence markers 17 at the corner of Church and 18th Street near post office, and evidence marker 19, in front of 1721 Church Str. Building, and exhibit 27, the fragment from the of victim's car carpet, were excluded as having been fired from the firearm recovered from the victim's car. The bullets and bullet fragments in exhibit 20 and exhibit 16, recovered from the neck of the victim, and the bullet jacket fragments in exhibit 25 and exhibit 27 were inconclusive as having been fired through the barrel of the same firearm. Exhibits 20, 25, 27, and 16 could not be identified or excluded as having been fired in the same firearm.

Officer Benjamin DeBlanc, a forensic biologist with the MNPD, testified as an expert in DNA analysis in the instant case. He produced a report based on his evaluation and analysis of the DNA, which was admitted into evidence as exhibit 31. Based on his report, the Appellant's DNA was found on the interior, front passenger side door of the victim's car and the Mountain Dew bottle. On cross-examination, Officer DeBlanc said, under the right conditions, DNA can remain present on a surface indefinitely.

The parties stipulated to an AFIS notification report, admitted as exhibit 33, showing that a latent lift card from the exterior passenger side, rear quarter of the victim's car included Steven Robinson. During the stipulation, the State proffered that no additional testing was done to confirm the latent print belonged to Steven Robinson.

MNPD Detective John Riddle testified on behalf of the Appellant. He agreed that he was working on the night of the offense and responded to the scene. Although he had no independent recollection of that night due to the age of the case, his report reflected that a conversation with Officer Burford prompted him to search for two suspects: one running north up 18th Street and one running south on 18th Street. He testified that he was unable to locate either suspect. Detective Riddle also agreed that his report reflected he had a conversation with Detective Riley prior to being relieved from duty that night. Detective Riley requested Detective Riddle to put up crime scene tape to block the alleyway just north of their location, which was done at approximately 11:00 p.m. that night. Detective Riddle described where he placed the crime scene tape on screen for the court. He said if the alleyway was blocked as described, then there should not be any traffic on either end.

On redirect examination, Detective Riddle confirmed he had no independent recollection of the conversation with Officer Burford. He said the specific part of the conversation referring to the two suspects running was "radio traffic." He reviewed the audio recordings from dispatch that night and determined that the source was not Officer Burford but Officer Charles Wingo, who gave the information over the radio. Detective Riddle testified that the information Officer Wingo relayed was provided to him by two construction workers. Detective Riddle agreed the construction workers told Officer

Wingo they saw one person run one way and another person run the other way, and that Officer Wingo did not observe this information himself.

Based on the above proof, the trial court found the Appellant guilty of the lesser-included offense of second-degree murder. Following a sentencing hearing, the trial court imposed a sentence of twenty-eight years' imprisonment. The Appellant filed a timely notice of appeal, and this case is properly before this court for review.

### ANALYSIS

The Appellant challenges the sufficiency of the evidence supporting his conviction of second-degree murder. Specifically, the Appellant argues there was no "conclusive" evidence establishing his identity as the shooter, and the proof failed to establish that the perpetrator acted knowingly in causing the victim's death. The Appellant also argues the State withheld information regarding two key witnesses in violation of Brady v. Maryland, 373 U.S. 83 (1963). Based on the testimony of Detective Riddle, the Appellant claims the State withheld the information from the two construction workers informing police of two suspects running in two different directions until trial. In response, the State argues the evidence sufficiently supports the Appellant's conviction in this case. Moreover, the State contends the Appellant has waived plenary review of his Brady claim because he failed to object to the testimony of Detective Riddle clarifying his report on this ground, and he failed to include this issue as grounds for his motion for a new trial. The State further contends the Appellant has failed to establish plain error because he was aware of the information contained in Detective Riddle's report which enabled him to pursue his theory of defense. Upon our review, we agree with the State.

Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict." State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009) (citing State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992)). When a defendant challenges the sufficiency of the evidence, the standard of review applied by this court is "whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" State v. Parker, 350 S.W.3d 883, 903 (Tenn. 2011) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)); see Tenn. R. App. P. 13(e). When this court evaluates the sufficiency of the evidence on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. State v. Davis, 354 S.W.3d 718, 729 (Tenn. 2011) (citing State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010)).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. State v. Sutton, 166 S.W.3d 686,

691 (Tenn. 2005); State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). The standard of review for sufficiency of the evidence “is the same whether the conviction is based upon direct or circumstantial evidence.” State v. Dorantes, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting Hanson, 279 S.W.3d at 275). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses’ testimony, and reconcile all conflicts in the evidence. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008) (citing Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Circumstantial evidence alone may be sufficient to sustain a conviction. State v. Sisk, 343 S.W.3d 60, 65 (Tenn. 2011). The jury determines the weight to be given to circumstantial evidence and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence are questions primarily for the jury. Dorantes, 331 S.W.3d at 379 (citing State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006)). When considering the sufficiency of the evidence, this court shall not substitute its inferences for those drawn by the trier of fact. Id.

To sustain a conviction of second-degree murder, the State was required to prove beyond a reasonable doubt that the Appellant unlawfully and knowingly killed the victim. Tenn. Code Ann. § § 39-13-201, 210(a)(1). “A person acts knowingly . . . when the person is aware that the conduct is reasonably certain to cause the result.” Id. § 39-11-302(b).

“The identity of the perpetrator is an essential element of any crime.” Rice, 184 S.W.3d at 662 (citing State v. Thompson, 519 S.W.2d 789, 793 (Tenn. 1975)). The State has the burden of proving the identity of the defendant as the perpetrator beyond a reasonable doubt. State v. Cribbs, 967 S.W.2d 773, 779 (Tenn. 1998). The identity of the defendant as the perpetrator may be established by direct evidence, circumstantial evidence, or a combination of the two. Thompson, 519 S.W.2d at 793. “The credible testimony of one identification witness is sufficient to support a conviction if the witness viewed the accused under such circumstances as would permit a positive identification to be made.” State v. Radley, 29 S.W.3d 532, 537 (Tenn. Crim. App. 1999) (citing State v. Strickland, 885 S.W.2d 85, 87-88 (Tenn. Crim. App. 1993)). The identification of the defendant as the perpetrator is a question of fact for the jury after considering all the relevant proof. State v. Thomas, 158 S.W.3d 361, 388 (Tenn. 2005) (citing Strickland, 885 S.W.2d at 87).

Viewed in the light most favorable to the State, the proof at trial showed that the victim and the Appellant had plans to attend a birthday celebration at the Indian Queen hookah bar in Nashville on the night of the offense. Ladonna Lewis and Shavona Williams testified they were in a car with some friends, “David,” “KiKi,” and “China,” on their way to celebrate “KiKi’s” birthday at the Indian Queen hookah bar when two phone calls came in through the Bluetooth speakers of the car. Shavona Williams testified that the Appellant called over the Bluetooth speaker phone and said that he shot at the victim’s car. Ladonna

Lewis also heard a call over the Bluetooth speaker of a car and recognized the voice of the caller as belonging to the Appellant. Lewis testified the Appellant told them that “he had shot, shot at [the victim’s] bitch ass for putting him out the car[.]” In addition, the Appellant called the victim’s mother, his aunt, the morning after the fatal shooting, and told her that he and the victim were arguing in the car, and the Appellant jumped out of the car and started shooting at the car. At a minimum, as noted by the trial court, this evidence establishes that the victim and the Appellant were together on the night of the offense, and something happened which angered the Appellant. This testimony further establishes the Appellant confessed to shooting at the victim’s car on the night of the offense. In support of this evidence, there were approximately fifteen shell case cartridges, all fired from the same weapon, found in the direction of the victim’s car’s path of travel, which established that the shooter was moving while firing the weapon, and the shooter was positioned to the right of the victim’s car based on at least four bullet defects found on the driver’s side of the victim’s car. Witness McGuirt observed that the car that was traveling on 18th Avenue through Church Street, presumably the victim’s car, was being chased by a person wearing dark clothes firing a gun at the car from the back right of the car. McGuirt’s personal observations confirm that the car was being driven while being fired upon, that the shots were being fired as he crossed the intersection, and that the shooter was to the right and behind the victim’s car. Witness Mathes identified the Appellant as on the scene immediately after the shooting occurred and hurriedly leaving the scene. Additionally, the proof supporting the knowingly element of the offense was established by the fact that the Appellant was upset with the victim for putting him out of the car and that he subsequently fired more than fifteen shots at the victim while driving the car. Based on the above evidence, a reasonable juror could have found beyond a reasonable doubt that the Appellant knowingly killed the victim. The Appellant is not entitled to relief.

Next, the Appellant argues that the State violated Brady in failing to disclose the information contained in Detective Riddle’s report regarding the two construction workers informing police of two suspects running in two different directions until trial. The record shows the Appellant did not object on this ground at trial or in his motion to suppress. Accordingly, the Appellant’s unpreserved issue is waived and subject only to plain error review. Tenn. R. App. P. 36(a) (“Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.”); State v. Enix, 653 S.W.3d 692, 699 (Tenn. 2022). The plain error doctrine states that “[w]hen necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time, even though the error was not raised in the motion for a new trial or assigned as error on appeal.” Tenn. R. App. P. 36(b). In order for this court to find plain error,

“(a) the record must clearly establish what occurred in the trial court; (b) a clear and unequivocal rule of law must have been breached; (c) a substantial right of the accused must have been adversely affected; (d) the accused did not waive the issue for tactical reasons; and (e) consideration of the error is ‘necessary to do substantial justice.’”

State v. Smith, 24 S.W.3d 274, 282 (Tenn. 2000) (quoting State v. Adkisson, 899 S.W.2d 626, 641-42 (Tenn. Crim. App. 1994)). “[P]lain error must be of such a great magnitude that it probably changed the outcome of the trial.” Adkisson, 899 S.W.2d at 642 (internal quotations marks and citations omitted). “It is the accused’s burden to persuade an appellate court that the trial court committed plain error.” State v. Bledsoe, 226 S.W.3d 349, 355 (Tenn. 2007) (citing United States v. Olano, 507 U.S. 725, 734 (1993)). “[T]he presence of all five factors must be established by the record before this Court will recognize the existence of plain error, and complete consideration of all the factors is not necessary when it is clear from the record that at least one of the factors cannot be established.” Smith, 24 S.W.3d at 283.

To establish a Due Process violation based on Brady, a defendant must show that: (1) the defendant requested the evidence (unless the evidence is obviously exculpatory, in which case the prosecution is bound to produce the information, without a request); (2) the State suppressed evidence in its possession; (3) the suppressed evidence was favorable to the defendant; and (4) the evidence was material. State v. Jackson, 444 S.W.3d 554, 594 (Tenn. 2014); State v. Edgin, 902 S.W.2d 387, 390 (Tenn.1995). The defendant has the burden of proving a Brady violation by a preponderance of the evidence. Edgin, 902 S.W.2d at 389. “The key to proving a constitutional violation is to show that the omission is of such significance as to deny the defendant the right to a fair trial.” Id.

In applying the above law, the record shows the Appellant made a general discovery request, and the State provided the Appellant with the report from Detective Riddle indicating that Officer Burford had given information about two suspects running in different directions. Officer Burford testified at trial and did not recall speaking to Detective John Riddle that night. Asked if his report indicated that two suspects fled in opposite directions, Officer Burford believed a security guard gave information concerning “direction of flights of people running” because of the large crowd. Officer Burford was extensively examined about the information relayed to Detective Riddle, and Officer Burford did not have a “specific recollection of telling Officer Riddle anything specific[.]” He further agreed that he did not receive any specific suspect “direction—description.” The Appellant called Detective Riddle to testify on his behalf, and Detective Riddle explained that on the night of the offense a different officer relayed information over radio dispatch that two construction workers said they saw two suspects running in opposite directions. Accordingly, to the extent that the Appellant raises a Brady violation based on

not knowing the source of information contained in Detective Riddle's report, we analyze this issue as a delayed disclosure of evidence, as opposed to a complete nondisclosure under Brady. State v. Caughron, 855 S.W.2d 526, 548 (Tenn. 1993) (Daughtrey, J., dissenting). When there has been a delayed disclosure, as opposed to a nondisclosure, the appellant must establish that the delayed disclosure prevented him from using the disclosed material effectively in preparing and presenting his case. Caughron, 855 S.W.2d at 548. Moreover, if the appellant failed to move for a continuance after receiving the information, thoroughly cross-examined the witness(es) regarding the evidence or failed to call or recall an available witness concerning the exculpatory statements, the potential Brady violation may be cured. Id.

Detective Riddle testified that the construction workers told the other officer that they saw one person run one way and another person run the other way, and that the other officer did not observe this information himself. We first observe that the Appellant did not move for a continuance upon learning that a different officer relayed the information concerning suspects running in different directions. In any case, the Appellant was able to utilize this information at trial, and he has failed to establish how the delayed disclosure of the source of the information caused prejudice to his case. United States v. Davis, 306 F.3d 398, 421 (6th Cir.2002) (internal quotation marks omitted) (noting that “[d]elay violates Brady only [when] the delay causes prejudice” to the defendant). Accordingly, the Appellant is not entitled to plain error relief.

### **CONCLUSION**

Based on the above reasoning and authority, the judgment of the trial court is affirmed.

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CAMILLE R. MCMULLEN, JUDGE